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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1926

UNION CAMP CORPORATION,

Petitioner,

v.

SEABOARD COAST LINE RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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No.

UNION CAMP CORPORATION,

Petitioner,

v.

SEABOARD COAST LINE RAILROAD COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on March 14, 1980.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals was entered on March 14, 1980, and is printed in Appendix "A" hereto, *infra,* pp. 1a-9a. The Judgment of the Court of Appeals was entered on March 14, 1980, and is printed in Appendix "B" hereto, *infra,* p. 10a-11a. Rehearing was denied on May 1, 1980, and notice of the order is printed in Appendix "C" hereto, *infra,* p. 12a.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1245(1).

QUESTIONS PRESENTED

Whether an injunction predicated on res judicata or collateral estoppel may equitably be granted in direct conflict with this Court's decision in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1930).

Furthermore, even if no such conflict were to exist, whether an injunction is sustainable where its wording conflicts with the opinion that sustains it (the opinion as to which certiorari is now sought).

STATEMENT

On March 21, 1978, Respondent Seaboard Coast Line Railroad Company filed a petition for injunctive relief to prevent Petitioner Union Camp Corporation from allegedly relitigating certain issues theretofore decided in the case of *Brown v. Seaboard Coast Line R. Co.*, 554 F.2d 1299 (5th Cir. 1977), *cert. den.*, 242 Ga. 55 (1978).

The *Brown* case was an action brought on the indemnity provisions of the switching agreement in question, following a jury finding that the underlying injury had been caused forty-five per cent by the negligence of the plaintiff therein (Brown), forty per cent by the indemnitee (Respondent herein), and fifteen per cent by the indemnitor (Petitioner herein). The issue in *Brown* was whether the agreement required indemnification for the negligence of the indemnitee in absence of explicit language to that effect. The District Court held, and the Fifth Circuit affirmed, that the indemnitee was entitled to indemnification. The judgment and all

costs in *Brown* thus cast upon Petitioner as indemnitor have been fully paid and satisfied.

Subsequent to the District Court opinion in *Brown*, the Court of Appeals of Georgia interpreted the same indemnity agreement as being insufficient under Georgia to support indemnification for the negligence of the indemnitee. *Seaboard Coast Line R. Co. v. Union Camp Corp.*, 145 Ga. App. 417, 243 S.E.2d 631 (1978), *cert. den.*, 242 Ga. 55 (1978). In that case, this Petitioner had been determined not to be negligent. (The *Seaboard Coast Line* case is hereinafter referred to as the "*SCL*" case, in the manner adopted by the Fifth Circuit in the opinion below.)

The Respondent then brought its aforesaid petition for injunctive relief, seeking to prevent Petitioner from questioning the interpretation of the indemnity agreement made by the *Brown* court in any other case or in any other manner. The District Court issued the permanent injunction on May 24, 1979, which is printed in Appendix "D," *infra*, pages 13a-15a. The Court of Appeals for the Fifth Circuit affirmed on March 14, 1980 in the opinion for which certiorari is now sought, and Petitioner's Motion for Rehearing was denied on May 1, 1980.

REASONS FOR GRANT OF WRIT

This Application concerns the Fifth Circuit's affirmance of an injunction which permanently prohibits Petitioner not only from relitigating but from questioning in any manner a District Court's interpretation of a Georgia indemnity contract, despite Georgia law to the contrary both in general and with respect to the identical contract under consideration.

The decision of the court below is hereby challenged on the following grounds:

1. Because the injunction sustained by the Fifth Circuit is in direct conflict with applicable state law, including a final decision of the state appellate court construing the identical contract under similar conditions (excepting only that Petitioner was found to be slightly negligent in the Federal case and without fault in the Georgia case). This Court's mandate in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1930), has been clearly violated by this affirmance of an injunction in opposition to the requirements of state law that, generally, indemnity contracts are to be strictly construed against the indemnitee and that, specifically, negligent indemnitees are not entitled to indemnity in absence of express contractual language.

2. Because, even were injunctive relief proper, the injunction sustained by the Fifth Circuit is inequitably overbroad, onerous, and in direct conflict with the very decision that sustained it—a decision that fails to make any reference to the wording of the injunction itself.

The inequitable nature of this injunction is of an importance transcending the *Brown* case, which it purports to protect through the court's ancillary powers. *Brown* has been fully disposed of, as has been the only Georgia appellate court case (*SCL*) also construing this agreement. That importance concerns, in part, the integrity of this Court's decisions and their effect under the principle of *stare decisis*. Failure to review this injunction would permit a circuit court to chip away at the *Erie* rule by enjoining a party from invoking applicable state law, whether that be the one state court case that has construed this agreement, or prior law respecting similar indemnity agreements, or future

cases that may arise on similar or identical indemnity agreements. The injunction would force Petitioner, instead, to accept in all future litigation the interpretation of state law made by a Federal court in a diversity action.

This indemnity agreement is structured to extend into the twenty-first century. No adequate estimate can be made of the times this Petitioner will be called upon to abandon its defense and indemnify the Respondent fully and automatically even though the latter be up to ninety-nine per cent negligent. That result, no matter how harsh, would not be unconscionable if Petitioner had bargained in the contract to indemnify for the Respondent's negligence. But no such specific language appears in this contract as required by the state law in context of which the parties contracted. Failure of this Court to review this injunction would therefore leave Petitioner inequitably deprived of the defenses available to all other indemnitors under contracts with similar or identical language.

The Fifth Circuit's opinion would require review even if, *arguendo*, an injunction were warranted in this case. A reading of that opinion leaves great doubt whether the court examined the precise wording of the injunction at issue. This doubt stems from the fact that portions of the injunction conflict directly with the affirming opinion. Therefore, failure of this Court to review the injunction may perpetuate the anomaly of a decision saying one thing and the injunction it upholds saying the contrary.

In support of this Application and in elaboration of the grounds therefor Petitioner contends:

I.

THE ISSUANCE AND SUSTAINING OF THE INJUNCTION VIOLATE THE *ERIE* DOCTRINE BY SHACKLING PETITIONER TO A FEDERAL COURT'S INTERPRETATION OF STATE LAW IN PREFERENCE TO INTERPRETATIONS BY THE APPELLATE COURTS OF THAT STATE.

For years it has been an established principle of Georgia law that indemnitees will be held harmless against their own negligence only when that intent is expressed in plain, clear, and unequivocal terms in the contract. *See, e.g., Seaboard Coast Line Railroad Co. v. Freight Delivery Service,* 133 Ga. App. 92, 210 S.E.2d 42 (1974); *Benson Pail Co. v. Williams Const. Co.,* 128 Ga. App. 47, 195 S.E.2d 671 (1973); *Ragland v. Rooker,* 124 Ga. App. 361, 183 S.E.2d 579 (1971); *Scarboro Enterprises v. Hirsh,* 119 Ga. App. 866, 169 S.E.2d 182 (1969); *Bohannon v. Southern Railway Co.,* 97 Ga. App. 849, 104 S.E.2d 603 (1958); *Green v. Shepherd Construction Co.,* 46 F.R.D. 434 (N.D.Ga. 1969); *Massee & Felton Lumber Co. v. Ga. & Fla. Ry.,* 143 Ga. 173, 188 S.E. 57 (1915); *Hill v. Carolina Freight Carriers Corp.,* 235 N.C. 705, 71 S.E.2d 133 (1952) (decided under Georgia law). Absence in all these cases of specific contractual language resulted in a construction strictly against the indemnitees. (That line of cases is in no way unusual, this being the universal rule of construing indemnity contracts. *See* 41 Am. Jur. 2d, "Indemnity" § 15, and 42 C.J.S., "Indemnity" § 12.)

In addition, it is a settled principle in Georgia that indemnity contracts must be construed strictly against the indemnitee and in favor of the indemnitor. *Martin v. American Optical Co.,* 184 F.2d 528 (5th Cir. 1950). Moreover, where an indemnity is not contracted for as

the principal purpose of the contract from a company in the business of furnishing indemnities for a premium, but is given by a party not in the indemnity business and as an incident of a contract with a different main purpose, the indemnity provision must be construed strictly in favor of the indemnitor. *Ibid.*

The contract in question contains no provision that the indemnitee's negligence be covered, and the indemnity provisions are merely part of a switching agreement between the owner of a railroad yard (Petitioner) and a party permitted to conduct its railroad operations thereon (Respondent). Nevertheless, the District Court interpreted the contract to permit one hundred per cent indemnification of the Respondent in a case in which it was forty per cent negligent. *Brown v. Seaboard Coast Line R. Co.*, 554 F.2d 1299 (5th Cir. 1977), *cert. den.*, 434 U.S. 975. Petitioner has fully paid off the indemnity decreed by *Brown*, and it does not intend by this petition to have that decision in any manner reconsidered or criticized. It seeks only the unfettered right to have applicable state law applied to its contract in future cases as and when they arise. The Georgia law of contracts and indemnities was the context in which the contract was made, and that law should apply when the Petitioner is called upon to pay indemnity. If a state court should decree that Petitioner must reward the indemnitee for its own negligence, that is quite a different matter from an injunction issuing from a Federal court to enjoin application of state law by state tribunals.

The lower courts' position is clearly a repudiation of the established rule of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1930). Regardless of whether *Brown* was wrongly decided, the *Erie* rule does not permit an

interpretation by a Federal court sitting in a diversity case to take precedence over interpretations made, or to be made, by appropriate state appellate courts. That the order herein complained of is in the form of an injunction only compounds the error. It is well settled that principles of equity, comity, and federalism must restrain Federal courts when asked to enjoin state court proceedings. *O'Shea v. Littleton*, 414 U.S. 488, 499 (1973); *Mitchum v. Foster*, 407 U.S. 225, 243 (1972). There can be no equity in an injunction which leaves one party free to prosecute however it wishes, while enjoining the other party from making its defense. Nor is there equity in an injunction that deprives a party of the right available to all other litigants in the state to argue pertinent state law.

The Fifth Circuit decision which Petitioner respectfully requests this Court to review was obviously aware of the *Erie* rule. The court in that case stated, at 3821 (pp. 2a-3a of the Appendix "A" attached hereto):

> In short, if the state court decision in *SCL* decided the same legal issue as was presented in *Brown*, this being a diversity jurisdiction matter, the state court decision controls. In that situation the injunction would not be proper.

This apparent reference to *Erie* is unassailable. But the court proceeded from that point to hold that the injunction was proper since, in its opinion, *Brown* and *SCL* were not inconsistently decided with respect to each other.

The fallacies of the Fifth Circuit's holding are immediately apparent. After stating that an injunction would not lie if the subsequent state court case (*SCL*) had been inconsistent with the prior Federal case (*Brown*), it upheld an injunction which prevents Petitioner from

citing in its behalf any inconsistent case—past, present, or future. The injunction does not simply prevent an argument that the interpretation of the contract should be controlled by *SCL*, a case the Fifth Circuit deems consistent with *Brown*. Rather, it prevents Petitioner, *inter alia*, from contending by way of defense or otherwise that the *Brown* rulings "are anything other than totally binding upon it, both as to any pending case or any case, claim or cause of action that has heretofore or shall hereafter accrue" (par. 3 of Appendix "A" hereto). Thus, Petitioner is effectively prevented from ever arguing any other precedent.

Most of the Fifth Circuit's opinion is devoted to an analysis of paragraphs 5 and 12 of the indemnity agreement and the respective presence or absence of Petitioner's negligence in *Brown* and *SCL*, leading to its conclusion that those cases are compatible. In fact, the presence or absence of *negligence of Petitioner as indemnitor* is a distinction without a difference, the issue being the legal interpretation of a contractual indemnity regarding *negligence of Respondent as indemnitee*. Nevertheless, even if, *arguendo*, the Fifth Circuit were correct in that position, its opinion errs by failing to address itself to the inequitable dilemma it presents to Petitioner should subsequent decisions of the state appellate courts reach a result *contrary to Brown on facts consistent with Brown*. Given the Georgia and majority American rules (cited at p. 6 of this brief) that refuses indemnification of a negligent indemnitee in the absence of unequivocal contractual language, one could reasonably expect a continuation of that line of authority in future Georgia cases to which Petitioner would not even be a party. In that event Petitioner could take little solace in the Fifth Circuit's position

that "if the state court decision . . . decided the same legal issue as was presented in *Brown* . . . the state court decision controls [and] the injunction would not be proper." Although such a case would satisfy the Fifth Circuit's express criteria for a situation in which an injunction would not be proper, Petitioner would remain bound by an immutable injunction. The injunction—and not the Fifth Circuit's opinion which it contradicts—would control.

A second fallacy to the Fifth Circuit's position is its implied assumption that an injunction from a Federal court is required to prevent the misapplication of *SCL* or other state court authorities to future litigation. The decision as to the controlling law can, and should, be made by the appropriate court having jurisdiction of the dispute. According to this Court, it is to be presumed that a state court will apply the correct law. *Robb v. Connally*, 111 U.S. 624, 637 (1883). Mere possibility of erroneous initial application of the law will usually not amount to irreparable injury necessary to justify an injunction against state courts. *Dombrowski v. Pfister*, 380 U.S. 479 (1965).

II.

EVEN IF INJUNCTIVE RELIEF WERE PROPER, THE INJUNCTION GRANTED BELOW CASTS INEQUITABLE BURDENS ON THE PETITIONER NOT WARRANTED BY THE ENDS SOUGHT TO BE PROTECTED BY THE FEDERAL COURTS.

The Fifth Circuit's opinion at page 3821 (p. 2a of Appendix "A" hereto) refers to "a permanent injunction entered by the district court enjoining UC [Petitioner herein] from, inter alia, re-litigating or challenging the issues resolved in the *Brown* decision." Nowhere does

the opinion quote or even refer to any specific language to establish that the injunction will, in fact, carry out the concerns of that opinion. Examination of the injunction (Appendix "D" hereto) clearly reflects the various instances in which the injunction exceeds the scope of issues decided by the Fifth Circuit and the District Court.

As one example, the entire basis for the Fifth Circuit's conclusion that *Brown* and *SCL* are compatible turns upon the fact that Petitioner was found negligent in *Brown* but not in *SCL*. However, one of the restraints of the injunction (Appendix "D," paragraph 4(a)) is that Petitioner may never contend that this indemnity agreement is inadequately worded where its "acts, defaults, *or* negligence" (emphasis added) have caused or contributed to the casualty. Since Petitioner's negligence is merely one stated factor in the disjunctive, the injunction fails to limit itself to the situation of Petitioner's negligence as in *Brown*, but could evidently apply where a jury finds Petitioner wholly free of negligence as in *SCL*. This portion of the injunction is not only inconsistent with the Fifth Circuit's opinion but is antagonistic to it.

Similarly, the injunction (Appendix "D," paragraph 4(c)) prevents Petitioner from ever contending that the scope of indemnity is affected "by the relative fault" of Petitioner and Respondent, strengthening the inference that Petitioner's fault or non-fault may be irrelevant to the injunction.

The injunction (Appendix "D," paragraph 1) further enjoins Petitioner from contending in any manner against the District Court's construction and interpretation of the indemnity contract. That restraint is not

limited to litigation involving the indemnity agreement in question but arguably prevents Petitioner from ever contravening the District Court's interpretation even on a different indemnity agreement with a different party. The same paragraph further, and incredibly, prevents a contest by Petitioner "in any form," which literally makes any mode of criticism a contempt of court.

In so restraining Petitioner, its privies, and even its attorneys from the various proscribed activities, the injunction goes far beyond the area that could have been of concern to the District Court or the Fifth Circuit. The latter's opinion validates the injunction only to the extent that it prevents Petitioner and its privies from ever contesting the applicability of *Brown* in a case brought by the Petitioner or its privies for indemnification under circumstances in which Petitioner has been found negligent. To the extent this detailed, three-page injunction goes beyond that, even into areas in which Petitioner may be absolved of any degree of negligence, it makes the Fifth Circuit's opinion self-contradictory by upholding an injunction that violates the premises on which the opinion was explicitly decided.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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June 6, 1980

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 79-2381
Summary Calendar.*

[March 14, 1980]

SEABOARD COAST LINE RAILROAD COMPANY,
Plaintiff-Appellee,

v.

UNION CAMP CORPORATION,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Georgia.

Before GEE, RUBIN and POLITZ, Circuit Judges.

PER CURIAM:

In 1975 the district court rendered a judgment in a suit involving Seaboard Coast Line Railroad Company (SCL), appellee, and Union Camp Corporation (UC), appellant, interpreting a contract containing two indemnity provisions. The decision was affirmed on appeal, *Brown v. Seaboard Coast Line Railroad Co.*, 554 F.2d 1299 (5th Cir. 1977). Thereafter the parties litigated in Georgia state court. At issue was the same indemnity agreement. *Seaboard Coast Line Railroad Co. v. Union Camp Corp.*, 145 Ga. App. 417, 243 S.E. 2d 631 (1978).

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* Fed. R. App. P. 34(a); 5th Cir. R. 18.

In the *Brown* decision the district court and this court held that SCL was entitled to indemnification even though it was found to be partially at fault. UC was also found partially at fault. In the *SCL* state court decision, SCL was denied indemnification upon a finding that it was partially at fault and UC was free of fault.

Now on appeal is a permanent injunction entered by the district court enjoining UC from, inter alia, re-litigating or challenging the issues resolved in the *Brown* decision. The injunction specifically addresses two pending state court actions which UC is commanded to retract and withdraw.

The first inquiry is whether the Anti-Injunction Statute, 28 U.S.C. § 2283, denies district court jurisdiction.[1] For the reasons hereafter assigned, we conclude that it does not.

The second inquiry is whether the *Brown* (federal) and *SCL* (state) decisions are consistent or inconsistent. If they are consistent the injunction is proper. *Southwest Airlines Co. v. Texas International Airlines, Inc.*, 546 F.2d 84 (5th Cir. 1977); *International Association of Machinists & Aerospace Workers v. Nix*, 512 F.2d 125 (5th Cir. 1975); and *Teas v. Twentieth Century-Fox Film Corp.*, 413 F.2d 1263 (5th Cir. 1969). On the other hand, if they are inconsistent—since *Brown* was based on diversity jurisdiction where state substantive law is to be applied—the injunction would not be proper. *Blair v. Commissioner*, 300 U.S. 5, 57 S. Ct. 330, 81 L. Ed. 465 (1937). In short, if the state court decision in *SCL* decided the same legal issue as was presented in

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[1] That statute provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Brown, this being a diversity jurisdiction matter, the state court decision controls. In that situation the injunction would not be proper.

UC owns a railroad yard which SCL uses pursuant to a contract. The two provisions of that contract which are pertinent to the matter before us are paragraphs five and twelve, which provide:

> 5. When deemed necessary by the Plant Switching Railroads, Union Camp will, at its expense, install, maintain and operate such road crossing protection as may be specified and considered necessary by the Plant Switching Railroads at any road crossing at grade over tracks of Union Camp; or, in lieu thereof, protect same with crossing watchman; Union Camp, at all times, to protect, hold harmless and indemnify the Plant Switching Railroads and S&A, collectively and individually, against any and all loss, cost, damage and expense accruing [on] account of any road crossing at grade with tracks of Union Camp.
>
> 12. In the construction, operation, use, repair, alteration or maintenance of the tracks, or any tracks adjacent thereto or connected therewith, covered by this agreement, or of the right of way, or any building, structure, equipment or work of any nature connected in any manner therewith, Union Camp hereby assumes all risk of, and liability for, loss or damage to any property or injury or death to any person, caused directly or indirectly, or contributed to, by the acts, defaults, or negligence of Union Camp, or any agent, employee or representative in its service or under its control, or by defects in trackage owned and maintained by Union Camp. Union Camp will further indemnify and save harmless the Plant Switching Railroads and S&A, or each of them, from all loss, damage

> and expense growing in any manner out of such acts, defaults or negligence of Union Camp, its agents, employees or representatives in its service or under its control, or in any manner growing out of defects in trackage owned and maintained by Union Camp.

Paragraph five imposes on UC the responsibility of maintaining the facilities at road crossings and paying for any loss occurring at any road crossing which is at grade with UC's tracks. Paragraph twelve provides that UC will pay for all loss caused or contributed to by UC's negligence.

A brief analysis of *Brown* and *SCL* is in order. In *Brown* the plaintiff was injured at a road crossing and sued UC and SCL. As noted, jurisdiction was based on diversity. SCL cross-claimed against UC. The jury found the plaintiff 45% negligent, SCL 40% negligent and UC 15% negligent. Under Georgia's comparative negligence statute, since his negligence exceeded that of either defendant, the plaintiff was precluded from recovering. SCL pressed its cross-claim for indemnification for attorney's fees and costs. The court quoted paragraphs five and twelve and then parsed the language of twelve and stated:

> The jury determined that Union Camp had indeed 'contributed to' the loss in the amount of 15%. *This determination in effect triggered Union Camp's obligation to indemnify the railroad for the entire loss,* even though the railroad was the other tortfeasor. [Emphasis added.]

554 F.2d at 1303.

In *SCL* the plaintiff was injured at a road crossing and sued UC and SCL and another railroad. The jury found the plaintiff 25% negligent and SCL and the other

railroad 75% negligent. UC was found free of negligence. SCL cross-claimed against UC. The trial court denied the cross-claim of SCL. The Court of Appeals of Georgia affirmed, relying on paragraph five, holding that the language was not specific enough to provide SCL with indemnification against losses occasioned by its own negligence.

> It is quite obvious here that the language in the indemnity agreement did not excuse the railroads from liability created by their own negligence so as to hold the indemnitor, Union Camp Corporation, liable for the negligence of the railroads.

243 S.E. 2d at 633.

The Georgia Court of Appeals made only a passing reference to paragraph twelve, quite understandably so because the jury had found no negligence on the part of UC. As noted, paragraph twelve is key to the negligence of UC.

The holding of *SCL* is that paragraph five, standing alone, is insufficient to bind UC to indemnify SCL for losses occasioned by the negligence of SCL. The decision in *Brown* is not inconsistent with that conclusion. In fact we stated as follows as related to paragraph five:

> While this [paragraph five] reference alone may be insufficient to indicate an intention that the railroad be indemnified against those accidents it causes . . . .

554 F.2d at 1303.

The district court concluded that the *Brown* decision and the *SCL* decision were factually distinguishable, the essential difference being that in *Brown* UC was found negligent and in *SCL* UC was found free of negligence. We agree. The two decisions are not irreconcilable. The

injunction, accordingly, may properly be entered if otherwise appropriate.

The final inquiry is the propriety of the injunction viewed through the prism of the concepts of collateral estoppel and res judicata. The conclusions of law and expressions by the district judge very succinctly and correctly dispose of this issue. Slightly rearranged and with minimum semantic changes, we adopt them as our own.

"In *Montana v. United States,* 440 U.S. 147, 99 S. Ct. 970, 973, 974, 59 L. Ed. 2d 210 (1979), the Supreme Court stated:

> A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . ." *Southern Pacific R. Co. v. United States,* 168 U.S. 1, 48-49, 18 S. Ct. 18, 27, 42 L. Ed. 355 (1897). Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action. *Cromwell v. County of Sac,* 94 U.S. 351, 352, 24 L. Ed. 195(1877); *Lawlor v. National Screen Service Corp.,* 349 U.S. 322, 326, 75 S. Ct. 865, 867, 99 L. Ed. 1122 (1955); 1B J. Moore, Federal Practice ¶ 0.405[1], at 621-624 (2d ed. 1974); Restatement (Second) of Judgments § 47 (Tent. Draft No. 1, March 28, 1973) (merger); *id.,* § 48 (bar). Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. *Parklane Hosiery v. Shore,* [439] U.S. [322,

326 n.5], 99 S. Ct. 645, 649 [n.5], 58 L. Ed. 2d [552, 559] n.5; Scott, Collateral Estoppel by Judgment, 56 Harv. L. Rev. 1, 2-3 (1942); Restatement (Second) of Judgments § 68 (Tent. Draft No. 4, Apr. 15, 1977) (issue preclusion). *Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdictions. Southern Pacific Railroad, supra,* 168 U.S. at 49, 18 S. Ct. at 27; *Hart Steel Co. v. Railroad Supply Co.,* 244 U.S. 294, 299, 37 S. Ct. 506, 507, 61 L. Ed. 1148 (1917). To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions. [Emphasis added.]

In *Southwest Airlines Co. v. Texas International Airlines, Inc., supra,* this court noted:

> The principle of res judicata serves several policies important to our judicial system. By declaring an end to litigation, the doctrine adds certainty and stability to social institutions. This certainty in turn generates public respect for the courts. By preventing relitigation of issues, res judicata conserves judicial time and resources. It also supports several private interests, including avoidance of substantial litigation expenses, protection from harassment or coercion by lawsuit, and avoidance of conflicting rights and duties from inconsistent judgments (footnotes omitted).

Finally, Section 68 of *Restatement of Judgments* 2d, teaches:

> Where an issue of fact or law is actually litigated and determined by a valid and final judgment, and the

> determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

The record in this case shows, beyond doubt, that the indemnity provisions of the Joint Switching Agreement were in fact litigated and construed by this court in *Brown*. This construction formed the basis for a *final* judgment. If principles of *res judicata* have any validity, Union Camp should not be permitted to re-litigate the same issues. *Tioga Railroad v. Blossburg & Corning Railroad*, 87 U.S. (20 Wall.) 137, 143, 22 L. Ed. 331 (1873) (re-litigation of a contract construed in a previous case prohibited); *New Orleans v. Citizens Bank*, 167 U.S. 371, 17 S. Ct. 905, 42 L. Ed. 202 (1896) (where the proper construction of a contract at issue was decided in a former action, that construction would bind the parties in all future disputes). *See International Association of Machinists & Aerospace Workers v. Nix, supra*; 1B Moore's Federal Practice, ¶ 0.401 to ¶ 0.402[1], ¶ 0.405[2], (2d ed. 1974).

Having determined that the *Brown* decision is *res judicata* as to its construction of the indemnity agreement, this court has "ancillary power" to protect the integrity of the judgment. *Dugas v. American Surety Co.*, 300 U.S. 414, 57 S. Ct. 515, 81 L. Ed. 720 (1937); *and see Southwest Airlines Co. v. Texas International Airlines, Inc., supra*. Stated another way, the case at bar is "supplemental" to *Brown, supra*. *Berman v. Denver Tramway Corp.*, 197 F.2d 946 (10th Cir. 1952). It does not, therefore, run afoul of the Anti-Injunction Statute.

Nor do principles of Federalism proscribe jurisdiction in this case. *See Southwest Airlines Co. v. Texas International Airlines, Inc., supra,* and *International Association of Machinists & Aerospace Workers v. Nix, supra.*"

The permanent injunction entered by the district court is, of course, based upon the decision in *Brown*, which is built upon the cornerstone of negligence on the part of UC. The *Brown* decision collaterally estops[2] the parties involved in that case from challenging the interpretation of the Joint Switching Agreement made therein, in any case involving negligence on the part of UC. Understood in this light and limited to that scope, the injunction does not violate the restrictions of the Anti-Injunction Statute. *See Piambino v. Bailey*, 610 F.2d 1306 (5th Cir. 1980).

For the foregoing reasons the decision of the district court is AFFIRMED.

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[2]The propriety of the injunction is based on the principle of collateral estoppel, rather than, as the district court indicated, on the related principle of res judicata. *See Montana, supra.*

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-2381
Summary Calendar

D.C. Docket No. CV478-56

SEABOARD COAST LINE RAILROAD COMPANY,

Plaintiff-Appellee,

v.

UNION CAMP CORPORATION,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA

Before GEE, Rubin and POLITZ, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

March 14, 1980

ISSUED AS MANDATE:

APPENDIX C

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
Office of the Clerk

Gilbert F. Ganucheau
Clerk

Tel.: 504-589-6514
600 Camp Street
New Orleans, La. 70130

May 1, 1980

TO ALL PARTIES LISTED BELOW:

No. 79-2381—*Seaboard Coast Line Railroad Company v. Union Camp Corporation*

Dear Counsel:

This is to advise that an order has this day been entered denying the petition( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the petition( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

Gilbert F. Ganucheau, Clerk

By: /s/ Mary Beth Breaux
Deputy Clerk

/mbb

cc: Mr. Edward T. Brennan
Mr. Arnold C. Young and
Mr. Stanley K. Richards

APPENDIX D

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
Savannah Division

Civil Action No. 478-56

[Filed: May 24, 1979]

SEABOARD COAST LINE RAILROAD COMPANY,

Plaintiff,

v.

UNION CAMP CORPORATION,

Defendant.

PERMANENT INJUNCTION

Upon the Order, Findings of Fact, and Conclusions of Law, entered on this date, Union Camp Corporation, its agents, servants, assignees, successors and attorneys, are permanently enjoined and forever restrained from:

1. asserting or contending in any form and in any manner that this Court's construction and interpretation of the contract between Seaboard Coast Line and Union Camp Corporation of May 1, 1967, in *Brown v. Seaboard Coast Line and Union Camp Corporation,* Civil No. 474-183, is in anywise incorrect or erroneous;

2. seeking, in any legal proceedings or otherwise, to contest, in any manner, its contractual obligations and liabilities as finally adjudicated by this Court in *Brown v. Seaboard Coast Line and Union Camp Corporation,* Civil No. 474-183;

3. contending, whether by way of defense or otherwise, that the rulings in *Brown v. Seaboard Coast Line and Union Camp Corporation* on issues before this Court with respect to the contract between Seaboard Coast Line and Union Camp Corporation dated May 1, 1967, are anything other than totally binding upon it, both as to any pending case or any case, claim or cause of action that has heretofore or shall hereafter accrue;

4. contending in any manner or in any forum that, with respect to the provisions of the contract of May 1, 1967, interpreted and construed by this Court in *Brown v. Seaboard Coast Line and Union Camp Corporation,* Civil Action No. 474-183:

   (a) The Agreement is insufficiently or inadequately worded or lacking in specificity to afford Seaboard Coast Line indemnity where casualties occur on or arise out of the use of the railroad tracks on Union Camp property in instances wherein the acts, defaults, or negligence of Union Camp Corporation has caused, directly or indirectly, or contributed to (in any degree) the casualty;

   (b) The right to indemnity by Seaboard Coast Line once coming into existence, does not include all expenses of litigation including attorneys fees and Court costs;

(c) The scope of indemnity afforded Seaboard Coastline is affected by the relative fault of the railroad and Union Camp;

(d) A condition precedent to a right of indemnity of Seaboard Coast Line is the establishment of liability by judgment or otherwise to a complaining injured or damaged third party against Seaboard Coast Line.

To implement the foregoing, Union Camp Corporation shall withdraw and retract, *instanter*, its pleadings in the State Court of Chatham County, Georgia, in *Colonial Fast Freight Lines, Inc. v. Seaboard Coast Line and Union Camp Corporation* and *Rankin P. Miller v. Seaboard Coast Line and Union Camp Corporation*, Civil Actions Numbered 74-1245 and 75-1636; and Union Camp Corporation shall confess judgment as prayed in Seaboard Coast Line's motions for summary judgment filed in each of said cases in the State Court of Chatham County.

AND IT IS SO ORDERED, this 24th day of May, 1979.

/s/ Anthony A. Alaimo
Chief Judge
United States District Court
Southern District of Georgia

Supreme Court, U. S.
FILED
JUL 7 1980
MICHAEL RODAK, JR., CLERK

No. 79-1926

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

UNION CAMP CORPORATION,
Petitioner,

v.

SEABOARD COAST LINE RAILROAD COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT
SEABOARD COAST LINE RAILROAD COMPANY
IN OPPOSITION

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July 7, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

No. 79-1926

UNION CAMP CORPORATION,

Petitioner,

v.

SEABOARD COAST LINE RAILROAD COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENT SEABOARD COAST LINE RAILROAD COMPANY IN OPPOSITION

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 613 F.2d 604, and is reproduced as Petitioner's "Appendix A." The Judgment of the Court of Appeals of March 14, 1980 is reproduced as Petitioner's "Appendix B." The Denial of Rehearing *En Banc* of May 1, 1980 is unpublished, but notice of the denial is reproduced as Petitioner's "Appendix C."

The Findings of Fact and Conclusions of Law of the District Court, dated May 24, 1979 is unpublished, but that opinion is quoted at length in the Fifth Circuit's opinion. The District Court's Permanent Injunction is unpublished, but is reproduced as Petitioner's "Appendix D."

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

Whether this Court should exercise its powers of discretionary review to reconsider an injunction barring the Petitioner from relitigating issues taken to a final judgment in a previous case.

Whether the *Erie* doctrine allows relitigation in State Court of issues taken to final judgment in a federal district court, despite the principles of *res judicata* and collateral estoppel.

Whether after repeated attempts by Petitioner to relitigate contract construction issues decided adversely to it by a federal court, an injunction by a federal court barring such attempts is inequitable.

STATEMENT OF THE CASE

Respondent Seaboard Coast Line Railroad Company (hereinafter "SCL" or "the railroad") petitioned for and obtained a permanent injunction in the District Court against Union Camp restraining it from relitigating issues adjudicated in *Brown v. Seaboard Coast Line Railroad Co.*, 554 F.2d 1299 (5th Cir. 1977); *rehearing*

denied, 559 F.2d 29 (5th Cir. 1977), *cert. denied*, 434 U.S. 975, 98 S. Ct. 533, 54 L. Ed. 2d 467 (1977) (hereinafter referred to as "*Brown*"). That injunction was affirmed by the Fifth Circuit Court of Appeals, 613 F.2d 604 (5th Cir. 1980), and rehearing *en banc* was denied. Appendix to Petition for Certiorari. Petitioner Union Camp Corporation (hereinafter "Union Camp") has petitioned for certiorari, asking this Court to review the equities of the injunction affirmed by the Fifth Circuit.

Brown involved the construction of an agreement providing indemnity for the "joint switching railroads" (including SCL) if the acts, defaults or negligence of Union Camp "caused . . . or contributed to" a casualty, occurring at Union Camp's plant at Savannah, Georgia. The District Court in *Brown* held Union Camp liable to fully indemnify SCL upon a jury finding of negligence attributable to Union Camp. Affirming, the Fifth Circuit held:

> The jury determined that Union Camp had indeed "contributed to" the loss . . . . This determination in effect triggered Union Camp's obligation to indemnify the railroad for the entire loss.

Brown, supra, at 554 F.2d 1303. This construction of the contract became a final judgment upon this Court's denial of certiorari.

Despite the clear and binding adjudication in *Brown* that in cases of joint negligence Union Camp was bound under its contract to indemnify SCL, Union Camp has refused to pay respect to the *Brown* decision. Instead, it has re-raised the same defenses it lost on in *Brown* in every case which has come up involving the indemnity contract (at the date of this writing, four cases). SCL

sought and obtained the present injunction to avoid the burden of relitigating the precise issue already decided, with all the attendant problems, risks and expenses of litigation; and the risk that some other court will fail to pay due deference to the *res judicata*/collateral estoppel effect of *Brown*.

It should be observed that Union Camp well understood that *Brown* involved binding construction of its contractual obligations. The case involved less than $7,000.00, yet Union Camp, well appreciating the significance of the issue, appealed to the Fifth Circuit, moved for rehearing *en banc* and petitioned for certiorari. Union Camp lost—but they refuse to accept the fact.

It is submitted that the injunction is unquestionably proper, and that this case does not warrant the exercise of this Court's power of discretionary review. It is therefore respectfully requested that the Petition for Certiorari be denied.

REASONS FOR DENIAL OF WRIT

I.

THERE ARE NO SPECIAL OR IMPORTANT REASONS JUSTIFYING THE EXERCISE OF THIS COURT'S POWER OF DISCRETIONARY REVIEW.

Union Camp's argument does not raise questions of important public policy or federal law. The case is primarily of interest only to the litigants. At the heart of the dispute is a conflict over the construction of an indemnity contract between the parties. The construction in dispute concerns very specific contract language, in a very narrow and well-defined factual

situation. Simply put, this case is not one of such broad importance that the Supreme Court should review it.

No question is raised regarding the federal court's power to issue an injunction to prevent burdensome relitigation of issues previously taken to final judgment. This Court has expressly recognized that the "relitigation exception" to the anti-injunction statute, 28 U.S.C. 2283, permits a federal court to enjoin relitigation in state courts of issues already decided in federal litigation. *Mitchum v. Foster,* 407 U.S. 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972) at 407 U.S. 235, 236. *See also Atlantic Coast Line Railroad v. Brotherhood of Locomotive Engineers,* 398 U.S. 281, 90 S. Ct. 1739, 26 L. Ed. 2d 234 (1970) at 398 U.S. 294, 295.

Union Camp has not pointed to any dispute between the Circuits regarding the powers of a federal court to enjoin relitigation of issues decided in federal court. Indeed, the circuits considering the issue appear to be in harmony. *See* for example, *Southwest Air Lines Company v. Texas International Airlines,* 546 F.2d 84 (5th Cir. 1977); *International Association of Machinists v. Nix,* 512 F.2d 125 (5th Cir. 1975); *Lamb Enterprises, Inc. v. Kirkoff,* 549 F.2d 1052 (6th Cir. 1977), *cert. denied,* 431 U.S. 968, 97 S. Ct. 2927, 53 L. Ed. 2d 1064 (1977); *United States v. Ford Motor Company,* 522 F.2d 962 (6th Cir. 1975); *Samuel T. Ennis & Co. v. Woodman Realty Co.,* 542 F.2d 45 (7th Cir. 1976); *Necchi Sewing Machine Sales Corp. v. Carl,* 260 F. Supp. 665 (S.D.N.Y. 1966).

Union Camp was cognizant of the *res judicata* effect that *Brown* would have on the contract in question before that case was final. Indeed, one of its points made in its petition for certiorari to this Court in the

Brown case was the potential long term binding effects the Fifth Circuit's judgment would have.

> Insofar as the instant parties are concerned, the indemnity agreement may be expected to run well into the 21st Century. A faulty precedent on its interpretation could impose long term and onerous financial burdens on the petitioner (the indemnitor) . . . .

Union Camp's Petition for Writ of Certiorari, page 6, in *Union Camp v. Seaboard Coast Line Railroad Company, Ray D. Brown, and Nancy Jane Brown*, Supreme Court of United States, Case No. 77-531.

Union Camp argues that *Brown* is inconsistent with a subsequent State Court decision, *Union Camp Corporation v. Seaboard Coast Line Railroad Co.*, 145 Ga. App. 417, 243 S.E.2d 631 (1978) (referred to herein as the "SCL" case as in the Fifth Circuit Opinion and in Union Camp's Petition). The *SCL* case did indeed involve the same contract as in issue in *Brown*, but the *SCL* case involved a critically different fact situation: no negligence chargeable to Union Camp. As the Fifth Circuit observed in *Brown*, negligence to any degree chargeable to Union Camp was the "trigger" for the indemnity. The *Brown* decision and the *SCL* decision are not inconsistent, as observed by both the District Court and the Fifth Circuit.

Union Camp is obviously unhappy with the result in *Brown*, but has unquestionably had adequate opportunity to fully litigate the issues there decided. Its arguments have been addressed to the Fifth Circuit no less than four times (in the appeal and petition for rehearing in *Brown*, and in the appeal and petition for rehearing in the present case), and to this Court once before, in

the petition for certiorari in *Brown* (which was denied). Union Camp is entitled to its day in Court, but having had it, it should then abide by the Court's judgment. Its repeated refusal to do so necessitated the injunction in the present case.

It is suggested that the framing of an injunction is not an appropriate matter for this Court's exercise of discretionary review. The framing of an injunction appropriate to the facts is a matter particularly addressed to the discretion of the District Court Judge, sitting as chancellor. *See J. M. Fields of Anderson, Inc. v. Kroger Company,* 330 F.2d 686 (5th Cir. 1964). Whether the Judge abused his discretion in issuing the injunction in the present case was argued at length in the Fifth Circuit, and that Court ultimately ruled the injunction was proper and affirmed it. Union Camp has showed no justification why this Court should spend its time and resources, and the time and resources of SCL, so that it may once again make the arguments which no Judge has found persuasive.

Finally, the most compelling reason for this Court to refuse to exercise its discretionary review is that the Fifth Circuit's affirmance of the injunction is, in a word, correct. As is discussed more fully below, the injunction, based on *res judicata*/collateral estoppel grounds, is not contradictory to the *Erie* doctrine. Union Camp is barred, and equitably so, from forcing SCL through expensive, time consuming, and unnecessary relitigation of the same contract terms, time after time, again with the risk of someday coming before a Judge who will not pay heed to the principles of *res judicata.* The injunction is by its express terms limited to the issues litigated and decided between SCL and Union Camp in *Brown.* The

injunction was properly affirmed by the Fifth Circuit Court of Appeals, after full consideration, and it is suggested that this Court should not now disturb it.

II.

THE INJUNCTION AFFIRMED BY THE FIFTH CIRCUIT IN NO WAY CONFLICTS WITH *ERIE*.

In asserting that the injunction below violates this Court's mandate in *Erie Railway Company v. Tompkins*, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188 (1930), Union Camp misinterprets the meaning of that landmark case, and blurs the clear distinction between the separate doctrines of *res judicata* and *stare decisis*. The basis for the injunction is the well established "relitigation" exception to the anti-injunction statute, 28 U.S.C. § 2283, specifically that a Federal Court may enjoin state court litigation of issues previously taken to a final judgment in Federal Court. *Erie*, on the other hand, did not involve the law of judgments at all, but simply held that the decisions of state appellate courts are part of the "state law" a Federal Court is bound to follow in a diversity case. *Erie* did not affect in any way the principle that a final judgment, whether the court be federal or state, is binding on the parties to the action. *Erie* is simply a rule of *stare decisis*.

The doctrine of *res judicata*/collateral estoppel, which formed the basis for the injunction, is not grounded on the principle of correctness but on the idea that there must be an end to litigation. In *Montana v. United States*, 440 U.S. 147, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979) at 440 U.S. 153, this Court held:

> A fundamental precept of common law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a "right, question

> or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . ." [Citations omitted.] Under res judicata, a final judgment on the merits bars further claims by the parties or their privies based on the same cause of action. [Citations omitted.] Under collateral estoppel, once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation. [Citations omitted.] Application of both doctrines is central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction. [Citations omitted.] To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by managing the possibility of inconsistent decision.

The foregoing passage was relied upon by both the District Court and the Fifth Circuit regarding the present injunction. It is suggested to the Court that the passage is a basis for denial of the present petition. The principles of finality set out in *Montana* simply are not affected by the rule of *Erie*.

Union Camp confuses the doctrines of *res judicata* and *stare decisis* in its petition to this Court. At pages 7 and 8 it contends that *Erie* does not permit an interpretation by a Federal Court sitting in a diversity case to take precedence over a state court interpretation of the same legal question. As an abstract principle of

law, the foregoing is correct, but the injunction does not perpetuate the *Brown* case as precedential effect, but is strictly limited to effectuating that judgment on *res judicata*/collateral estoppel grounds. Despite Union Camp's contentions to the contrary, the injunction does not shackle Union Camp to a Federal Court interpretation of "state law." What it does is bind Union Camp to follow and abide by the final judgment of the District Court.

The justification for the injunction is reflected by Union Camp's petition. The basis of Union Camp's contention is simple dissatisfaction with the Fifth Circuit's determination of state law in the *Brown* case. An example of Union Camp's continued attempts to relitigate *Brown* is seen in its language at page 7. Union Camp states:

> It [Union Camp] seeks only the unfettered right to have applicable state law apply to its contract in future cases as and when they arise.

In other words, it seeks the right to continue to litigate the very issues which were taken to a final judgment in *Brown*. This conduct necessitated the injunction. Union Camp's argument that it should have the unfettered right to relitigate *Brown* in State Court is a request for a ruling from this Court that *res judicata*/collateral estoppel is no longer viable in Federal Court diversity cases. It would have this Court establish that a final judgment from a District Court in a diversity case is final only until such time as a State Court should give consideration to the same issue. Union Camp seems to think that federal judgments are one way tickets good for this trip, and today only.

III.

THE INJUNCTION IS EQUITABLE AND IS NO BROADER THAN REQUIRED TO PREVENT BURDENSOME RELITIGATION OF THE ISSUES DECIDED IN *BROWN*.

The injunction was necessitated by Union Camp's inequitable conduct, specifically its persistence in ignoring *Brown* and seeking to force burdensome relitigation of the issues decided in *Brown* on SCL. The record shows a number of examples of Union Camp's obstinance.

First are *Miller v. Seaboard Coast Line Railroad Co. and Union Camp Corp.*, State Court of Chatham County, Georgia, Civil Action No. 76-1636, and *Colonial Fast Freight Lines, Inc. v. Seaboard Coast Line Railroad Co., and Union Camp Corp.*, State Court of Chatham County, Georgia, Civil Action No. 74-1245. These cases are the property damage claims arising from the same accident giving rise to the *Brown* personal injury litigation. The indemnity issues are absolutely identical, but Union Camp refuses to recognize the *res judicata* effect of *Brown* on the indemnity agreement. Instead, it has filed defenses on the indemnity claims in *Miller* and *Colonial* which are virtual verbatim copies of the arguments made by and decided against Union Camp in the Fifth Circuit in *Brown*.

Two other examples of Union Camp's obstinant refusal to recognize the ruling in *Brown* are *Daniel Razook v. Central of Georgia Railroad Co.*,* Superior Court of Chatham County, Georgia, Civil Action No. 122-33, and *Seaboard Coast Line Railroad Co. v. Union*

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*Central of Georgia is party to the contract in question, and is one of the "joint switching railroads" along with SCL.

Camp Corp., Superior Court of Chatham County, Georgia, Civil Action No. 11705-0. Rather than limit its defense to the indemnity claims to the area left unresolved by *Brown* (the question of indemnity when there is no negligence chargeable to Union Camp) Union Camp has continued with a broad denial of indemnity, just as if *Brown* had never been decided.

The carefully worded injunction explicitly limits its operation to the issues, the parties, and the contract provisions litigated in *Brown*. Read in context, the injunctive language is no broader than necessary to prevent relitigation of the issues *Brown* resolved. Specifically, that if Union Camp "caused . . . or contributed to . . ." a casualty that full indemnity attached, that the indemnity includes expenses and attorney's fees, and that no judgment in favor of a claimant is necessary for the indemnity to operate.

Union Camp's assertion that it is barred by the injunction from contravening the District Court's interpretation of the contract even on a different indemnity agreement with a different party ignores the plain language of the injunction. Paragraph One provides that Union Camp is barred from contesting the Court's construction of "the contract between Seaboard Coast Line and Union Camp Corporation of May 1, 1967 . . . ." Simply put, if a dispute arises on a different indemnity contract with a different party, the construction of the "contract between Seaboard Coast Line and Union Camp Corporation of May 1, 1967 . . ." is not in issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ARNOLD C. YOUNG
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Seaboard Coast Line
Railroad Company

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July 7, 1980